REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and these remarks are provided in response thereto.

Claims 1, 12-23, and 25-28 remain in this application. Claims 2-11 have been canceled. Claim 24 has been withdrawn as the result of an earlier restriction requirement, and applicant retains the right to present that claim in a divisional application.

Claims 1, 12-23, and 25-28 were rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. For the following reasons, the rejections are respectfully traversed.

As already discussed in the response filed on July 31, 2007, applicant's representative points out that at the top of page 14 of the specification, it is discussed that "[i]n the storage unit 50...the audio test signals T3 experienced during the in situ tuning procedure and, therefore coupled together, the individual assessments experienced will be stored according to the entry signals to E3...and will be continually expanded during the procedure", thus supporting the claim language that the storage device stores "a plurality of assessment data and previously experienced audio track data". This section goes on to state that "a number of possible *test signal* and *assessment records* can be stored in the standard storage unit 52 as a database, together with the respective identification of a *following test signal* T0, which has been found in the respective records as optimal for a further tuning step", lending further support to the cited claim language, along with the later language reciting that a subsequent control signal is computed in "dependency upon" the stored data. Finally, the section goes on to state that the "the audio test signal T0 assigned and optimally as the one to be played next will be selected by the record found from the standard storage unit 52 and...the assigned medium sector will be controlled on the control input E9 of the play-back unit 9", further lending support to the claim language.

Additional support is found at the top of page 15, where it states that "the automatic setting off directly of audio test signals T to be played after assessment input and/or in refined form with consideration of already experienced individual tuning steps." Page 13 also supports the use of a plurality of stored assessments to initiate a test signal in lines 2-4 stating that "the test signals T on the basis of logical operations...can be allocated to B assessments"

and at lines 7-8 when it states that each test signal T can be initiated "optimally for the existing assessment *combination* on the output side" (emphasis added). Additional support is also found on pages 2-4 and 9. Accordingly, the claimed features are supported by the specification and thus the rejections should be withdrawn.

Claims 1, 12-15, 17 19-22, and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Moser *et al.* (WO 85/00509) in view of Engebreston *et al.* (U.S. 4,548,082) in further view of Delisle *et al.* (U.S. 3,809,811. Claim 14 was rejected as above, in further view of Geiger (U.S. 4,807,208). Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Basseas (6,674,867), as modified by Delisle. .For the following reasons, the rejection is respectfully traversed.

Claims 1, 20, and 22 recite an apparatus or method for fitting a hearing device where the apparatus comprises "a storage device for storing a plurality of assessment data and previously experienced audio track data" where a control signal is provided based on "said stored plurality of assessment data and stored previously experienced audio track data". None of the references teach any such storage device, database, or control signal. Although the Examiner cites Engebreston as teaching the use of a disc for *storing* sound to be played to the user, the Examiner fails to cite any teaching of any storage device for storing "assessment data" or "previously experienced audio track data", which is clearly different than the audio data of the reference. This information is not stored by any of the devices in the cited references.

The Examiner argues that Basseas discloses storing "appraisals" at col. 4, lines 14-40. However, there is no teaching that this data is stored, and, in fact, it could be used on-the-fly to adjust various parameters (see Fig. 1, where the user inputs are used in the fuzzy logic system 9) . Nevertheless, even if, for the sake of argument, the reference were considered to store loudness parameters, there is no teaching in any of the references for storing "previously experienced audio track data". Thus, the claims are patentable over the references.

Furthermore, it should be noted that the claims require that the next audio track that is *automatically* selected be based on information *stored* about previous assessments and previous audio tracks that were experienced by the user. In contrast, Moser teaches that the user directly (manually) select the next audio track, and Engebretson fails to teach any dependency of a subsequent track of speech samples on any assessment results, but instead merely teaches that the next speech sample is chosen based on a desire to continue, not on a

user assessment (see col. 21, starting at line 60). Nowhere does the prior art suggest that a plurality of assessment data is utilized, i.e., none teaches that the next track is chosen based on a plurality of preceding assessment results.

Accordingly, claims 1, 20, and 22 are patentable over the references for any of the above reasons.

Similar, claim 23 recites a method for fitting a hearing device including the step of "*automatically* selecting, in dependency of test signals experienced and the respective said appraisings, a subsequent audio test signal" where "said computing unit computes a control signal to said audio control output in dependency upon said stored assessment data and stored previously experienced audio track data", and thus the arguments provided above also apply to the method claims.

Accordingly, the claims are patentable over the references, because the combination fails to teach the invention (i.e., none of the references teach using an assessment based on listening to test signals representing common daily experiences to automatically select a next test signal also representing common daily experiences).

Finally, the Examiner has failed to support the rejections for obviousness because the Examiner has failed to provide legally sufficient motivation for combining the references, and thus the obviousness rejections are improper.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 31949.

Respectfully submitted,
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